



SEP 13 2017

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BY U.S. CERTIFIED MAIL

September 8, 2017

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Attorney General
U.S. Department of Justice
Citizen Suit Coordinator
Room 2615
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: *Center for Community Action and Environmental Justice v. NewBasis West, LLC*,
United States District Court Case No. 5:16-cv-02193-DSF-DTB
Settlement Agreement; 45-day review

Dear Citizen Suit Coordinators,

On September 8, 2017, the parties in the above-captioned case entered into a settlement agreement setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the Consent Decree and 40 C.F.R. § 135.5, the enclosed settlement agreement is being submitted to the U.S. Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for Defendant listed below. Thank you for your attention to this matter.

Sincerely,

Douglas J. Chermak
Attorneys for Plaintiff Center for Community Action and Environmental Justice

cc via First Class Mail: Alexis Strauss, Acting Regional Administrator, EPA Region 9

cc via e-mail: Bruce Flushman, Counsel for Defendants,
bflushman@wendel.com

Encl.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("AGREEMENT") is entered into between the Center for Community Action and Environmental Justice ("CCA EJ") and NewBasis West LLC ("NewBasis") (all parties collectively are referred to as the "SETTLING PARTIES") with respect to the following facts and objectives:

RECITALS

WHEREAS, CCA EJ is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to working with communities to improve the social and natural environment. Penny Newman is the Executive Director of CCA EJ;

WHEREAS, NewBasis leases property at 2626 Kansas Avenue in Riverside, California where it operates a polymer concrete-casted underground utility enclosure manufacturing facility (the "Facility"). Through June 30, 2015, the Facility has operated pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Beginning on July 1, 2015, the Facility has operated pursuant to State Water Resources Control Board Water Quality Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001 (hereinafter "General Permit"). A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, on or about August 16, 2016, CCA EJ provided NewBasis with a Notice of Violations and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

WHEREAS, on October 17, 2016, CCA EJ filed its Complaint in the United States District Court for the Central District of California (*Center for Community Action and Environmental Justice v. NewBasis West LLC*, Case No. 5:16-cv-02193-DSF-DTB). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

WHEREAS, NewBasis denies any and all of CCAEJ's claims in its 60-Day Notice Letter and Complaint;

WHEREAS, CCAEJ and NewBasis, through their authorized representatives and without either adjudication of CCAEJ's claims or admission by NewBasis of any alleged violation or other wrongdoing, have chosen to resolve in full CCAEJ's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, CCAEJ and NewBasis have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CCAEJ's allegations set forth in the 60-Day Notice Letter and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CCAEJ and NewBasis do hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF CCAEJ

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the Agency Approval Date, as defined in Paragraph 17 below, CCAEJ shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Central District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CCAEJ is dismissing with prejudice all claims in CCAEJ's Complaint. Consistent with Paragraphs 24 and 25 herein, the Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through the Termination Date, as defined in Paragraph 23 below, or through the conclusion of any proceeding to enforce this AGREEMENT, or until the completion of any payment or affirmative duty required by this AGREEMENT.

COMMITMENTS OF NEWBASIS

3. Compliance with General Permit. NewBasis agrees to operate the Facility in compliance with the applicable requirements of the General Permit, as such may be amended, modified or reissued from time to time, and the Clean Water Act. Reference herein to the General Permit includes any subsequent amendment or modification to the General Permit and a subsequently issued General Permit, as applicable at the time in question.

4. Implemented Storm Water Controls. NewBasis shall maintain in good working order all storm water collection and treatment systems at the Facility currently installed or to be installed pursuant to this AGREEMENT, including but not limited to, existing housekeeping measures.

5. Additional Best Management Practices. NewBasis shall implement the following structural best management practices (“BMPs”) to improve the storm water pollution prevention measures at the Facility:

a. **Berm.** By November 1, 2017, NewBasis shall install a low berm along the southern boundary of the Facility to prevent sediment-laden run-on (eroded soil) from entering the Facility from the neighboring unpaved bus yard. The berm is to be located on the edge of site pavement along a cyclone fence for a length of approximately 600 feet.

b. **Storm Water Treatment System.** To reduce the levels of suspended solids and iron being discharged from the Facility, NewBasis shall install an active storm water treatment system to treat at a minimum, all of the Facility’s industrial storm water discharges (“Treatment System”). The Treatment System shall be installed in the vicinity of the existing discharge location in the northwestern corner of the Facility, near the intersection of Kansas and Robert Streets. By November 1, 2017, NewBasis shall install new infrastructure to redirect all storm water surface flows at the Facility to the discharge location in the northwestern corner. The proposed Treatment System and supporting infrastructure are highlighted in blue in a map of the Facility attached hereto as Exhibit C.

The Treatment System shall be sized in accordance with the “Design Storm Standards for Treatment Control BMPs” requirements for flow-based BMPs set forth in Section X.H of the General Permit. The Treatment System will be designed to handle the maximum flow rate of storm water runoff produced from a rainfall intensity of 0.2 inches/hour, in accordance with the General Permit. The capacity based on this rate is 510 gallons per minute (“gpm”) for the entire Facility.

NewBasis shall incorporate a phased approach for the installation of the Treatment System. The first phase shall consist of a system of sand filters and bag filters to remove larger particles. If the Treatment System does not achieve the reduction of pollutants to consistently below the Numeric Action Levels (“NALs”) set forth in the General Permit, NewBasis shall modify the Treatment System with additional or reconfigured filters, or implement a second phase to expand the system to incorporate the addition of a flocculant to precipitate smaller particles. If the system still does not achieve reduction of pollutant levels below NALs, a third phase of treatment would include use of specialized media to reduce dissolved iron. NewBasis shall implement Phase 1 of the Treatment System by November 1, 2017. The system is described in greater detail as follows:

i. **Phase 1.** NewBasis shall design and implement a Phase 1 system designed to remove from the Facility’s storm water discharges an estimated 75% of particles greater than 10 microns. The Phase I Treatment System shall consist of infrastructure to collect and convey storm runoff from, at a minimum, the industrial area of the Facility, to treatment equipment consisting of a clarifier (settling tank), sand filter pods, and bag filter lungs. Based on design storm flow calculations, the planned Phase I Treatment System will utilize 2 sand filter pods, and 4 bag filter lungs, each of which contains 4 bag filters.

ii. **Phase 2.** Phase 2 of the Treatment System, if implemented, would be designed to treat with a flocculant to precipitate smaller particles, and then filter through activated carbon media. The components of this media treatment are as follows: reaction tank; equipment for flocculant and air injection; carbon media and filtration vessel; and a process pump.

iii. **Phase 3.** Phase 3 of the Treatment System, if implemented, would be designed to reduce residual dissolved iron by directing storm water treated by Phases 1 and 2 through specialized media for removal. The components of this polishing treatment phase consist of specialized media and a vessel.

6. Confirmation of New Structural BMPs. By November 15, 2017, NewBasis shall confirm the installation of the berm and Phase 1 of the Treatment System described above in Paragraphs 5.a and 5.b by submitting digital photos to CCAEJ. To the extent that NewBasis is required to implement additional phases of the Treatment System pursuant to this AGREEMENT, NewBasis shall confirm the installation of any additional phases by submitting digital photos to CCAEJ within two (2) weeks of the completed installation of the additional phase.

7. Monitoring of Storm Water Discharges. NewBasis shall collect and analyze storm water discharges from the Facility in accordance with the General Permit and this AGREEMENT for, at a minimum, pH, total suspended solids, oil and grease, and iron. During the life of this AGREEMENT, NewBasis shall collect and analyze discharges from one additional qualifying storm event ("QSE") during each half of every reporting year. For example, during the first half of the 2017-2018 reporting year, NewBasis shall collect and analyze storm water discharges from three (3) QSEs. If NewBasis is unable to collect and analyze storm water discharges from three (3) QSEs during the first half of the 2017-2018 reporting year, then it shall collect and analyze storm water discharges from four (4) QSEs during the second half of the 2017-2018 reporting year.

8. Monitoring Results. Results from the Facility's sampling and analysis during the term of this AGREEMENT shall be uploaded to the State Water Resources Control Board's ("State Board") Storm Water Multiple Application and Report Tracking System ("SMARTS") in accordance with the requirements of the General Permit. Within seven (7) days of uploading said results, NewBasis shall provide notice to CCAEJ via e-mail that said results have been uploaded to SMARTS.

9. Treatment System Performance and Upgrades. If the Facility's storm water sampling results obtained after the previously installed treatment system is operational generate an exceedance (as defined in the General Permit) of either an annual NAL or instantaneous NAL

during the 2017-2018, 2018-2019, or 2019-2020 reporting years (“Triggering Event”) NewBasis agrees to submit a Memorandum to CCAEJ and take appropriate Response Action in accordance with this Section 9.

a. **Memorandum.** By July 30 following the reporting year in which a Triggering Event occurs, NewBasis shall prepare and e-mail to CCAEJ a written statement (“Memorandum”) identifying the exceedance to be addressed and describing its specific plans for Response Action including but not limited to the specific action to be taken, a description of any new structures or equipment to be installed or any modifications to be made to existing structures or equipment, and the implementation timeline. If the Response Action does not include the subsequent phase of the Treatment System described in Paragraph 5.b., the Memorandum shall include the rationale for the proposed Response Action.

b. **Response Action.** If the Triggering Event involves exceedance of total suspended solids and/or iron, NewBasis agrees to implement the subsequent phase of the Storm Water Treatment System described in paragraph 5.b. unless, taking into consideration the severity of the exceedance, specific modification of the existing Treatment System (e.g., reconfiguration of filters, alteration of media or other adjustments) offers a reasonable likelihood of achieving NALs. To the extent that the Triggering Event involves an NAL exceedance only for pH and/or oil and grease (“O&G”), the Response Action shall include specific BMPs appropriate to control that particular parameter or parameters, and implementation of the next phase of the treatment system as described in Paragraph 5(b) would not be required. Should a Triggering Event require a subsequent phase of the Treatment System, installation of such phase as described in the Memorandum shall be completed by October 15 following the monitoring year in which a Triggering Event occurs, except NewBasis and CCAEJ may mutually agree to extend such deadline.

10. Meet and Confer Process. Upon receipt of the Memorandum, CCAEJ may review and comment on any proposed Response Action within thirty (30) days. If requested by CCAEJ within thirty (30) days of receipt of such Memorandum, CCAEJ and NewBasis shall meet and confer to discuss the contents of the Memorandum and the adequacy of the proposed Response

Action to improve the quality of the Facility's storm water discharges to levels at or below the NALs. If CCAEJ has neither commented nor requested to meet and confer within 30 days, NewBasis may proceed with the Response Action proposed in the Memorandum. If within twenty-one (21) days of the parties meeting and conferring, the parties do not agree on the adequacy of the proposed treatment phase set forth in the Memorandum, the SETTLING PARTIES may agree to seek a settlement conference with the Magistrate Judge assigned to this action pursuant to Paragraphs 24 and 25 below. If the SETTLING PARTIES fail to reach agreement on additional measures, CCAEJ may bring a motion before the District Court consistent with Paragraphs 24 and 25 below. If CCAEJ does not request a meet and confer regarding the Memorandum within the thirty (30) day period provided for in this paragraph, CCAEJ shall waive any right to object to such Memorandum pursuant to this AGREEMENT. The Parties may agree in writing to extend any dates contained in this paragraph in order to further this paragraph's meet and confer procedure.

11. Any concurrence or failure to object by CCAEJ with regard to the reasonableness of any additional measures required by this AGREEMENT or implemented by NewBasis shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the Facility's storm water discharges into compliance with applicable water quality criteria or the BAT/BCT requirements set forth in the General Permit.

12. **Provision of Documents and Reports.** During the life of this AGREEMENT, NewBasis shall provide CCAEJ with a copy of all documents submitted to the Regional Board or the State Board concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be mailed to CCAEJ contemporaneously with submission to such agency. Alternatively, to the extent that NewBasis submits such documents to the Regional Board or State Board via SMARTS, NewBasis may satisfy this requirement by mailing or emailing such documents to CCAEJ, or by providing notice to CCAEJ via e-mail that such documentation has been uploaded to SMARTS within fourteen (14) business days of a written request (via e-mail or regular mail) by CCAEJ.

13. Amendment of Storm Water Pollution Prevention Plan (“SWPPP”). Within sixty (60) days after the District Court’s entry of the Order, NewBasis shall amend the Facility’s SWPPP to incorporate all changes, improvements, sample log forms, and best management practices set forth in or resulting from this AGREEMENT. NewBasis shall ensure that all maps, tables, and text comply with the requirements of the General Permit. NewBasis shall ensure that the SWPPP describes all structural and non-structural BMPs and details the measures to be installed. NewBasis shall provide a copy of the amended SWPPP to CCAEJ in accordance with Paragraph 12 or may provide a hard copy within thirty (30) days of completion.

14. Mitigation Payment. In recognition of the good faith efforts by NewBasis to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by NewBasis of any penalties, which have been disputed but may have been assessed in this action if it had been adjudicated adverse to NewBasis, the SETTLING PARTIES agree that NewBasis will pay the sum of Thirty-five thousand dollars (\$35,000) to the Rose Foundation for Communities and the Environment (“Rose Foundation”) for the sole purpose of providing grants to environmentally beneficial projects relating to water quality improvements in the Santa Ana River watershed. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, Suite 600, Oakland, CA 94607, Attn: Tim Little. Quarterly payments shall be made by NewBasis to the Rose Foundation in four equal amounts on or before the following dates: (1) within forty-five (45) calendar days of the District Court’s entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT (“Dismissal”); (2) within three (3) months after the first payment; (3) within six (6) months after the first payment; and (4) within nine (9) months after the first payment. NewBasis shall copy CCAEJ with any correspondence and a copy of the checks sent to the Rose Foundation. The Rose Foundation shall provide notice to the SETTLING PARTIES within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and a description of the specific project supported by the funds.

15. Fees, Costs, and Expenses. As reimbursement for CCAEJ’s investigative, expert and attorneys’ fees and costs, NewBasis shall pay CCAEJ the sum of Thirty-two thousand dollars (\$32,000). Quarterly payments shall be made by NewBasis in four equal amounts on or before the following dates: (1) within forty-five (45) calendar days of the District Court’s entry of the Order

dismissing the action described in Paragraph 2 of this AGREEMENT; (2) within three (3) months after the first payment; (3) within six (6) months after the first payment; and (4) within nine (9) months after the first payment. Payment by NewBasis to CCAEJ shall be made in the form of checks payable to "Lozeau Drury LLP," and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CCAEJ that have or could have been claimed in connection with CCAEJ's claims, up to and including the District Court's entry of the Order.

16. Compliance Oversight Costs. As reimbursement for CCAEJ's future fees and costs that will be incurred in order for CCAEJ to monitor NewBasis's compliance with this AGREEMENT and to effectively meet and confer and evaluate storm water monitoring results for the Facility, NewBasis agrees to reimburse CCAEJ for its reasonable fees and costs incurred in overseeing the implementation of this AGREEMENT up to but not exceeding five thousand (\$5,000) per reporting year (July 1 – June 30). Fees and costs reimbursable pursuant to this paragraph may include, but are not limited to, those incurred by CCAEJ or its counsel to meet and confer regarding proposed treatment phases, review water quality sampling reports, review annual reports, discussion with representatives of NewBasis concerning potential changes to compliance requirements, preparation and participation in meet and confer sessions and mediation, and water quality sampling. CCAEJ shall provide an invoice containing an itemized description of tasks performed and associated daily time for any fees and costs incurred in overseeing the implementation of this AGREEMENT during the prior reporting year. Up to three annual payments (one addressing any monitoring associated with the 2017-2018 reporting year, and one addressing monitoring associated with the 2018-2019 reporting year, and one addressing any monitoring associated with the 2019-2020 reporting year) shall be made payable to "Lozeau Drury LLP" within thirty (30) days of receipt of an invoice from CCAEJ that contains an itemized description of tasks performed and associated daily time, fees and costs incurred by CCAEJ to monitor implementation of the AGREEMENT during the previous twelve (12) months or the period since the last invoice.

17. **Review by Federal Agencies.** CCAEJ shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the “Agencies”) via certified mail, return receipt requested, within five (5) days after the Effective Date of this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies’ review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts and the confirming correspondence of DOJ. In the event that the Agencies comment negatively on the provisions of this AGREEMENT, CCAEJ and NewBasis agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CCAEJ and NewBasis are unable to resolve any issue(s) raised by the Agencies in their comments, CCAEJ and NewBasis agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to this matter to resolve the issue(s). If the SETTLING PARTIES cannot resolve the issue(s) through a settlement conference, this AGREEMENT shall be null and void. The date of (a) the Agencies’ unconditioned approval of this AGREEMENT, (b) the expiration of the Agencies’ review period, or (c) the SETTLING PARTIES’ resolution of all issues raised by the Agencies, whichever is earliest, shall be defined as the “Agency Approval Date.”

NO ADMISSION OR FINDING

18. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT nor compliance with this AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

19. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors, members, shareholders, and agents from any and all claims and demands of any kind, nature, or description whatsoever, known and unknown, and

from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which it may presently have, or which may later accrue or be acquired by it, arising from the Complaint or Notice Letters, including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in the Complaint or Notice Letters, for the alleged failure of Defendant to comply with the Clean Water Act at the Facility, up to and including the Termination Date of this AGREEMENT, as defined in Paragraph 23.

20. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint at the Facility up to and including the Termination Date of this AGREEMENT.

21. For the period beginning on the Effective Date and ending on the Termination Date, neither CCAEJ, its officers, executive staff, members of its Steering Committee will not file or support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against or relating to the Facility that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge the Facility's compliance with the Clean Water Act, or the General Permit.

TERMINATION DATE OF AGREEMENT

22. Unless an extension is agreed to in writing by the SETTLING PARTIES, this AGREEMENT shall terminate on December 15, 2021 (the "Termination Date"), or through the

conclusion of any proceeding to enforce this AGREEMENT, or until the completion of any payment or affirmative duty required by this AGREEMENT.

DISPUTE RESOLUTION PROCEDURES

23. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer in good faith to resolve any dispute arising under this AGREEMENT. In the event that such disputes cannot be resolved through this meet and confer process, the SETTLING PARTIES agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the SETTLING PARTIES cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to submit the dispute via motion to the District Court.

24. In resolving any dispute arising from this AGREEMENT, the Court shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the District Court. The District Court shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof. The SETTLING PARTIES agree to file any waivers necessary for the Magistrate Judge to preside over any settlement conference and motion practice.

GENERAL PROVISIONS

25. **Impossibility of Performance.** Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall notify the other in writing within fourteen (14) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of

such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

26. Construction. The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, and the Clean Water Act or specifically herein.

27. Choice of Law. This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

28. Severability. In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

29. Correspondence. All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, overnight mail, or e-mail as follows:

If to CCA EJ:	Penny Newman, Executive Director Center for Community Action and Environmental Justice P.O. Box 33124 Riverside, CA 92519 (951) 360-8451 Penny.newman@ccaej.org	Copy to:	Michael R. Lozeau Douglas J. Chermak Lozeau Drury LLP 410 12th Street, Suite 250 Oakland, CA 94607 (510) 836-4200 michael@lozeaudrury.com doug@lozeaudrury.com
If to NewBasis:	Karl Stockbridge, Chief Executive Officer NewBasis West LLC 2626 Kansas Ave. Riverside, CA 92507 (530) 852-8800 kstockbridge@newbasis.com	Copy to:	Wendy L. Manley Wendel, Rosen, Black & Dean, LLP 1111 Broadway, 24th Floor Oakland, CA 94607 (510) 834-6600 wmanley@wendel.com

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

30. Counterparts. This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

31. Assignment. Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

32. Modification of the Agreement. This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

33. Full Settlement. This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

34. Integration Clause. This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements, covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

35. Authority. The undersigned representatives for CCAEJ and NewBasis each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

NEWBASIS WEST LLC

CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE

By:

Name:

Title:

Date:

J. Curry
~~Karl Stockbridge~~ Jennifer Curry
~~Chief Executive Officer~~ CEO
9/7/2017

By:

Name:

Title:

Date:

Penny Newman
Penny Newman
Executive Director
9/8/2017

APPROVED AS TO FORM:

For Defendant

For: Plaintiff

WENDEL, ROSEN, BLACK &
DEAN, LLP

LOZEAU DRURY LLP

By:

Name:

Date:

Bruce Flush

Bruce S. Flushman, Esq.

9/7/2017

By:

Name:

Date:

Douglas J. Chermak

Douglas J. Chermak, Esq.

9/8/17

EXHIBIT A

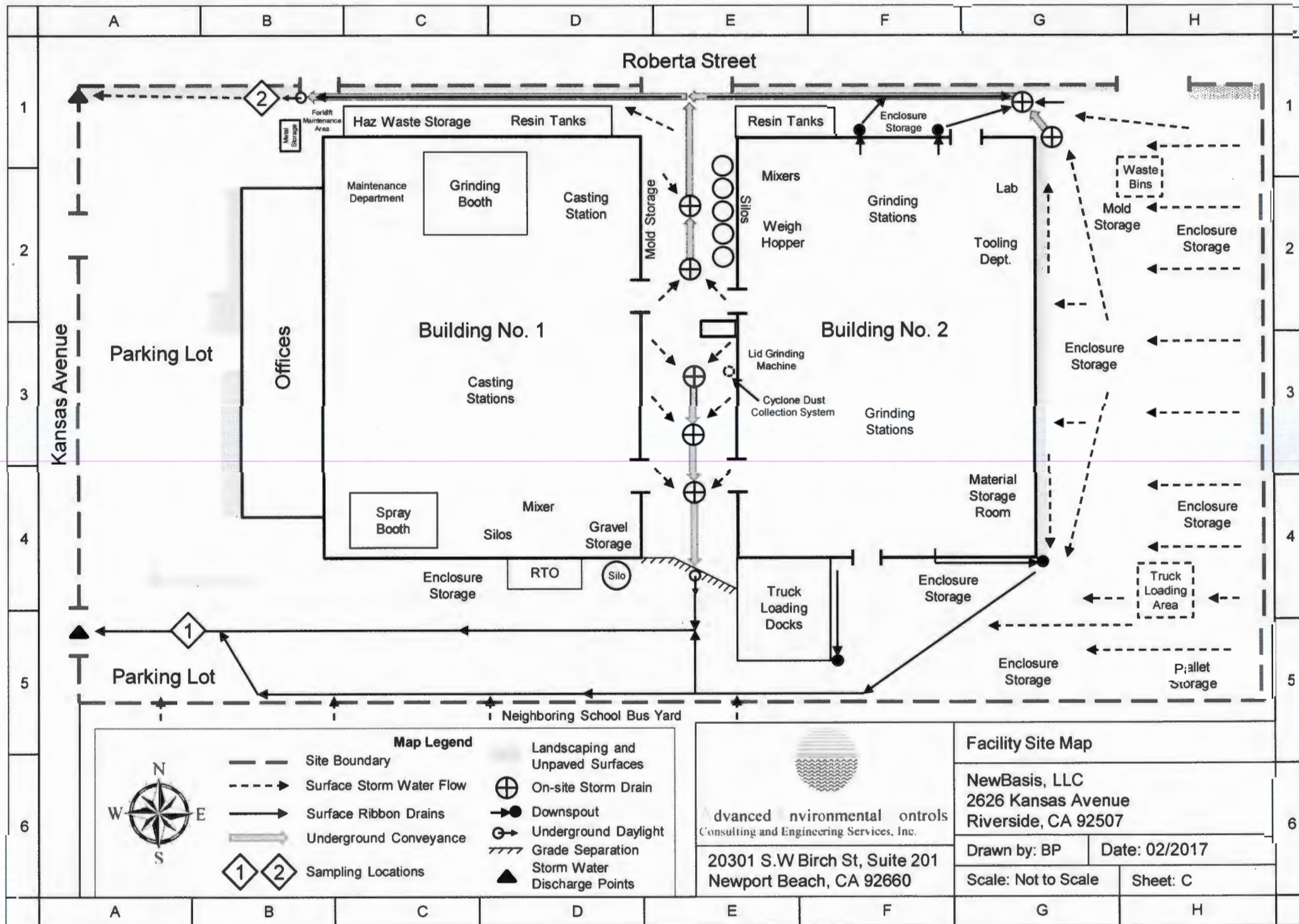


EXHIBIT B

1 Michael R. Lozeau (State Bar No. 142893)
2 Douglas J. Chermak (State Bar No. 233382)
3 LOZEAU DRURY LLP
4 410 12th Street, Suite 250
5 Oakland, CA 94607
6 Tel: (510) 836-4200
7 Fax: (510) 836-4205
8 E-mail: michael@lozeaudrury.com
9 doug@lozeaudrury.com

10 Attorneys for Plaintiff
11 CENTER FOR COMMUNITY ACTION
12 AND ENVIRONMENTAL JUSTICE

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 CENTER FOR COMMUNITY
16 ACTION AND ENVIRONMENTAL
17 JUSTICE, a non-profit corporation,

18 Plaintiff,

19 vs.

20 NEWBASIS WEST LLC, a Delaware
21 corporation,

22 Defendant.

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

23 CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL
24 JUSTICE ("CCA EJ"), a California non-profit corporation, by and through its counsel,
25 hereby alleges:

26 **I. JURISDICTION AND VENUE**

27 1. This is a civil suit brought under the citizen suit enforcement provisions
28 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean

1 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties
2 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33
3 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the
4 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02
5 (power to issue declaratory relief in case of actual controversy and further necessary
6 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);
7 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

8 2. On August 16, 2016, Plaintiff provided notice of Defendant’s violations
9 of the Act, and of Plaintiff’s intention to file suit against Defendant, to the
10 Administrator of the United States Environmental Protection Agency (“EPA”); the
11 Administrator of EPA Region IX; the Executive Director of the State Water
12 Resources Control Board (“State Board”); the Executive Officer of the California
13 Regional Water Quality Control Board, Santa Ana Region (“Regional Board”); and to
14 Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct
15 copy of CCAEJ’s notice letter is attached as Exhibit A, and is incorporated by
16 reference.

17 3. More than sixty days have passed since notice was served on Defendant
18 and the State and federal agencies. Plaintiff is informed and believes, and thereupon
19 alleges, that neither the EPA nor the State of California has commenced or is
20 diligently prosecuting a court action to redress the violations alleged in this complaint.
21 This action’s claim for civil penalties is not barred by any prior administrative penalty
22 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

23 4. Venue is proper in the Central District of California pursuant to Section
24 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
25 located within this judicial district.

26
27 **II. INTRODUCTION**

28 5. This complaint seeks relief for Defendant’s discharges of polluted storm

1 water from Defendant's industrial facility located at 2626 Kansas Ave. in Riverside,
2 California ("Facility") in violation of the Act and National Pollutant Discharge
3 Elimination System ("NPDES") Permit No. CAS000001, State Water Resources
4 Control Board Water Quality Order No. 97-03-DWQ ("1997 Permit"), as renewed by
5 Water Quality Order No. 2014-0057-DWQ ("2015 Permit") (the permits are
6 collectively referred to hereinafter as the "Permit" or "General Permit"). Defendant's
7 violations of the discharge, treatment technology, monitoring requirements, and other
8 procedural and substantive requirements of the Permit and the Act are ongoing and
9 continuous.

10 **III. PARTIES**

11 6. Plaintiff CCAEJ is a non-profit public benefit corporation under the laws
12 of the State of California with its main office in Jurupa Valley, California. CCAEJ is
13 dedicated to working with communities to advocate for environmental justice and
14 pollution prevention. CCAEJ and its members are deeply concerned with protecting
15 the environment in and around their communities, including the Santa Ana River
16 Watershed. To further these goals, CCAEJ actively seeks federal and state agency
17 implementation of the Act and other laws and, where necessary, directly initiates
18 enforcement actions on behalf of itself and its members.

19 7. CCAEJ has members living in the community adjacent to the Facility and
20 the Santa Ana River Watershed. They enjoy using the Santa Ana River for recreation
21 and other activities. Members of CCAEJ use and enjoy the waters into which
22 Defendant has caused, is causing, and will continue to cause, pollutants to be
23 discharged. Members of CCAEJ use those areas to recreate and view wildlife, among
24 other things. Defendant's discharges of pollutants threaten or impair each of those uses
25 or contribute to such threats and impairments. Thus, the interests of CCAEJ's members
26 have been, are being, and will continue to be adversely affected by Defendant's failure
27 to comply with the Clean Water Act and the Permit. The relief sought herein will
28

1 redress the harms to Plaintiff caused by Defendant's activities.

2 8. CCAEJ brings this action on behalf of its members. CCAEJ's interest in
3 reducing Defendant's discharges of pollutants into the Santa Ana River and its
4 tributaries and requiring Defendant to comply with the requirements of the General
5 Permit are germane to its purposes. Litigation of the claims asserted and relief
6 requested in this Complaint does not require the participation in this lawsuit of
7 individual members of CCAEJ.

8 9. Continuing commission of the acts and omissions alleged above will
9 irreparably harm Plaintiff and one or more of its members, for which harm they have no
10 plain, speedy or adequate remedy at law.

11 10. Defendant NEWBASIS WEST LLC ("NewBasis") is a corporation that
12 operates the Facility that is at issue in this action.

13 **IV. STATUTORY BACKGROUND**

14 11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
15 any pollutant into waters of the United States, unless such discharge is in compliance
16 with various enumerated sections of the Act. Among other things, Section 301(a)
17 prohibits discharges not authorized by, or in violation of, the terms of an NPDES
18 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

19 12. Section 402(p) of the Act establishes a framework for regulating
20 municipal and industrial storm water discharges under the NPDES program. 33
21 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by
22 Section 402(p) to regulate industrial storm water discharges through individual
23 permits issued to dischargers or through the issuance of a single, statewide general
24 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

25 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator
26 of the U.S. EPA has authorized California's State Board to issue NPDES permits
27 including general NPDES permits in California.
28

1 **General Permit**

2 14. The State Board elected to issue a statewide general permit for industrial
3 storm water discharges. The State Board originally issued the General Permit on or
4 about November 19, 1991. The State Board modified the General Permit on or about
5 September 17, 1992. Pertinent to this action, the State Board reissued the General
6 Permit on or about April 17, 1997 (the "1997 Permit"), and again on or about April 1,
7 2014 (the "2015 Permit"), pursuant to Section 402(p) of the Clean Water Act, 33
8 U.S.C. § 1342(p). The 1997 Permit was in effect between 1997 and June 30, 2015.
9 The 2015 Permit went into effect on July 1, 2015. The 2015 Permit maintains or
10 makes more stringent the same requirements as the 1997 Permit.

11 15. In order to discharge storm water lawfully in California, industrial
12 dischargers must comply with the terms of the General Permit or have obtained and
13 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

14 16. The General Permit contains several prohibitions. Effluent Limitation
15 B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require
16 dischargers to reduce or prevent pollutants in their storm water discharges through
17 implementation of the Best Available Technology Economically Achievable ("BAT")
18 for toxic and nonconventional pollutants and the Best Conventional Pollutant Control
19 Technology ("BCT") for conventional pollutants. Discharge Prohibition A(2) of the
20 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water
21 discharges and authorized non-storm water discharges that cause or threaten to cause
22 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997
23 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water
24 discharges to any surface or ground water that adversely impact human health or the
25 environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving
26 Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit
27 storm water discharges that cause or contribute to an exceedance of any applicable
28

1 water quality standards contained in Statewide Water Quality Control Plan or the
2 applicable Regional Board's Basin Plan.

3 17. In addition to absolute prohibitions, the General Permit contains a variety
4 of substantive and procedural requirements that dischargers must meet. Facilities
5 discharging, or having the potential to discharge, storm water associated with
6 industrial activity that have not obtained an individual NPDES permit must apply for
7 coverage under the State's General Permit by filing a Notice of Intent to Comply
8 ("NOI"). Dischargers have been required to file NOIs since March 30, 1992.

9 18. Dischargers must develop and implement a Storm Water Pollution
10 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities
11 and measures that comply with the BAT and BCT standards. The General Permit
12 requires that an initial SWPPP has been developed and implemented before October
13 1, 1992. The objective of the SWPPP requirement is to identify and evaluate sources
14 of pollutants associated with industrial activities that may affect the quality of storm
15 water discharges and authorized non-stormwater discharges from the facility, and to
16 implement best management practices ("BMPs") to reduce or prevent pollutants
17 associated with industrial activities in storm water discharges and authorized non-
18 storm water discharges. *See* 1997 Permit, § A(2); 2015 Permit, § X(C). These BMPs
19 must achieve compliance with the General Permit's effluent limitations and receiving
20 water limitations, including the BAT and BCT technology mandates. To ensure
21 compliance with the General Permit, the SWPPP must be evaluated and revised as
22 necessary. 1997 Permit, §§ A(9), (10); 2015 Permit, § X(B). Failure to develop or
23 implement an adequate SWPPP, or update or revise an existing SWPPP as required, is
24 a violation of the General Permit. 2015 Permit, Fact Sheet § I(1).

25 19. Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a
26 SWPPP. Among other requirements, the SWPPP must include: a pollution prevention
27 team; a site map; a list of significant materials handled and stored at the site; a
28

1 description of potential pollutant sources; an assessment of potential pollutant sources;
2 and a description of the BMPs to be implemented at the facility that will reduce or
3 prevent pollutants in storm water discharges and authorized non-stormwater
4 discharges, including structural BMPs where non-structural BMPs are not effective.
5 Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP
6 requirements as the 1997 Permit, except that all dischargers are now required to
7 develop and implement a set of minimum BMPs, as well as any advanced BMPs as
8 necessary to achieve BAT/BCT, which serve as the basis for compliance with the
9 2015 Permit's technology-based effluent limitations and receiving water limitations.
10 See 2015 Permit, § X(H). The 2015 Permit further requires a more comprehensive
11 assessment of potential pollutant sources than the 1997 Permit; more specific BMP
12 descriptions; and an additional BMP summary table identifying each identified area of
13 industrial activity, the associated industrial pollutant sources, the industrial pollutants,
14 and the BMPs being implemented. See 2015 Permit, §§ X(G)(2), (4), (5). Section
15 X(E) of the 2015 Permit requires that the SWPPP map depict, *inter alia*, all storm
16 water discharge locations.

17 20. The 2015 Permit requires dischargers to implement and maintain, to the
18 extent feasible, all of the following minimum BMPs in order to reduce or prevent
19 pollutants in industrial storm water discharges: good housekeeping, preventive
20 maintenance, spill and leak prevention and response, material handling and waste
21 management, erosion and sediment controls, an employee training program, and
22 quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to
23 implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015
24 Permit, Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to
25 implement and maintain, to the extent feasible, any one or more of the following
26 advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial
27 storm water discharges: exposure minimization BMPs, storm water containment and
28

1 discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See
2 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to
3 achieve compliance with either technology or water quality standards is a violation of
4 the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP
5 descriptions and a BMP Summary Table. *See* 2015 Permit, § X(H)(4), (5).

6 21. The General Permit requires dischargers to develop and implement an
7 adequate written Monitoring and Reporting Program. The primary objective of the
8 Monitoring and Reporting Program is to detect and measure the concentrations of
9 pollutants in a facility's discharge to ensure compliance with the General Permit's
10 discharge prohibitions, effluent limitations, and receiving water limitations. As part
11 of their monitoring program, dischargers must identify all storm water discharge
12 locations that produce a significant storm water discharge, evaluate the effectiveness
13 of BMPs in reducing pollutant loading, and evaluate whether pollution control
14 measures set out in the SWPPP are adequate and properly implemented. The 1997
15 Permit required dischargers to collect storm water samples during the first hour of
16 discharge from the first storm event of the wet season, and at least one other storm
17 event during the wet season, from all storm water discharge locations at a facility. *See*
18 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample
19 *four* (rather than two) storm water discharges from all discharge locations over the
20 course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3).

22 22. Facilities are required to make monthly visual observations of storm
23 water discharges. The visual observations must represent the quality and quantity of
24 the facility's storm water discharges from the storm event. 1997 Permit, § B(7); 2015
25 Permit, § XI.A.

26 23. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and
27 analyze storm water samples from two qualifying storm events ("QSEs") during the
28 first half of each reporting year (July 1 to December 31) and two QSEs during the

1 second half of each reporting year (January 1 to June 30).

2 24. Under the 1997 Permit, facilities must analyze storm water samples for
3 “toxic chemicals and other pollutants that are likely to be present in storm water
4 discharges in significant quantities.” 1997 Permit, § B(5)(c)(ii). Under the 2015
5 Permit, facilities must analyze storm water samples for “[a]dditional parameters
6 identified by the Discharger on a facility-specific basis that serve as indicators of the
7 presence of all industrial pollutants identified in the pollutant source assessment.”
8 2015 Permit, § XI(B)(6)(c).

9 25. Section B(14) of the 1997 Permit requires dischargers to include
10 laboratory reports with their Annual Reports submitted to the Regional Board. This
11 requirement is continued with the 2015 Permit. Fact Sheet, Paragraph O.

12 26. The 1997 Permit, in relevant part, requires that the Annual Report
13 include an Annual Comprehensive Site Compliance Evaluation Report (“ACSCE
14 Report”). 1997 Permit, § B(14). As part of the ACSCE Report, the facility operator
15 must review and evaluate all of the BMPs to determine whether they are adequate or
16 whether SWPPP revisions are needed. The Annual Report must be signed and
17 certified by a duly authorized representative, under penalty of law that the information
18 submitted is true, accurate, and complete to the best of his or her knowledge. The
19 2015 Permit now requires operators to conduct an Annual Comprehensive Facility
20 Compliance Evaluation (“Annual Evaluation”) that evaluates the effectiveness of
21 current BMPs and the need for additional BMPs based on visual observations and
22 sampling and analysis results. See 2015 Permit, § XV.

23
24 27. The General Permit does not provide for any mixing zones by
25 dischargers. The General Permit does not provide for any receiving water dilution
26 credits to be applied by dischargers.

27 **Basin Plan**

28 28. The Regional Board has identified beneficial uses of the Santa Ana

1 Region's waters and established water quality standards for the Santa Ana River and
2 its tributaries in the "Water Quality Control Plan for the Santa Ana River Basin
3 (Region 8)," generally referred to as the Basin Plan.

4 29. The beneficial uses of these waters include, among others, groundwater
5 recharge, water contact recreation, non-contact water recreation, wildlife habitat,
6 warm freshwater habitat, and rare, threatened or endangered species. The non-contact
7 water recreation use is defined as "[u]ses of water for recreational activities involving
8 proximity to water, but not normally involving contact with water where water
9 ingestion is reasonably possible. These uses include, but are not limited to,
10 picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine
11 life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above
12 activities."

13 30. The Basin Plan includes a narrative toxicity standard which states that
14 "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic
15 resources to levels which are harmful to human health."

16 31. The Basin Plan includes a narrative oil and grease standard which states
17 that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other
18 material in concentrations which result in a visible film or in coating objects in the
19 water, or which cause a nuisance or adversely affect beneficial uses."

20 32. The Basin Plan includes a narrative suspended and settleable solids
21 standard which states that "Inland surface waters shall not contain suspended or
22 settleable solids in amounts which cause a nuisance or adversely affect beneficial
23 uses..."

24 33. The Basin Plan provides that "[t]he pH of inland surface waters shall not
25 be raised above 8.5 or depressed below 6.5..."

26 34. The Basin Plan contains a narrative floatables standard which states that
27 "[w]aste discharges shall not contain floating materials, including solids, liquids, foam
28

1 or scum, which cause a nuisance or adversely affect beneficial uses.”

2 35. The Basin Plan contains a narrative color standard which states that
3 “[w]aste discharges shall not result in coloration of the receiving waters which causes
4 a nuisance or adversely affect beneficial uses.”

5 36. EPA has established Parameter Benchmark Values as guidelines for
6 determining whether a facility discharging industrial storm water has implemented the
7 requisite BAT and BCT. These benchmarks represent pollutant concentrations at
8 which a storm water discharge could potentially impair, or contribute to impairing,
9 water quality, or affect human health from ingestion of water or fish. The following
10 EPA benchmarks have been established for pollution parameters applicable to the
11 Facility: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100
12 mg/L; oil and grease (“O&G”) – 15 mg/L; and iron – 1.0 mg/L.

13 37. These benchmarks are reflected in the 2015 Permit in the form of
14 Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs,
15 which reflect the 2008 MSGP benchmark values, and instantaneous maximum NALs,
16 which are derived from a Water Board dataset. The following annual NALs have
17 been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; and iron –
18 1.0 mg/L. An exceedance of annual NALs occurs when the average of all samples
19 obtained for an entire facility during a single reporting year is greater than a particular
20 annual NAL. The reporting year runs from July 1 to June 30. The 2015 Permit also
21 establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400
22 mg/L; and O&G – 25 mg/L. An instantaneous maximum NAL exceedance occurs
23 when two or more analytical results from samples taken for any single parameter
24 within a reporting year exceed the instantaneous maximum NAL value (for TSS and
25 O&G) or are outside of the instantaneous maximum NAL range for pH. When a
26 discharger exceeds an applicable NAL, it is elevated to “Level 1 Status,” which
27 requires a revision of the SWPPP and additional BMPs. If a discharger exceeds an
28

1 applicable NAL during Level 1 Status, it is then elevated to "Level 2 Status." For
2 Level 2 Status, a discharger is required to submit an Action Plan requiring a
3 demonstration of either additional BMPs to prevent exceedances, a determination that
4 the exceedance is solely due to non-industrial pollutant sources, or a determination
5 that the exceedance is solely due to the presence of the pollutant in the natural
6 background.

7 38. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
8 enforcement actions against any "person," including individuals, corporations, or
9 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)
10 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33
11 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil
12 penalties of up to \$37,500 per day per violation, pursuant to Sections 309(d) and 505
13 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

14 **V. STATEMENT OF FACTS**

15 39. Defendant NewBasis owns and/or operates the Facility, a 275,000 square
16 foot industrial site located within the City of Riverside.

17 40. The Facility falls within Standard Industrial Classification ("SIC") Code
18 3272.

19 41. Based on CCAEJ's investigation, including a review of the Facility's
20 Notice of Intent to Comply with the Terms of the Industrial General Permit ("NOI"),
21 SWPPP, aerial photography, and CCAEJ's information and belief, storm water is
22 collected and discharged from the Facility through a series of channels that discharge
23 via at least four outfalls. The outfalls discharge storm water and pollutants contained
24 in that storm water to channels that flow into the Santa Ana River. Plaintiff is
25 informed and believes and thereupon alleges that pollutants discharged from the
26 Facility flow into the river at stretches identified as Reach 3 or Reach 4.

27 42. Plaintiff is informed and believes, and thereupon alleges that the storm
28

1 water flows over the surface of the Facility where industrial activities occur including
2 storage areas, casting stations, mixing areas, grinding stations, truck loading docks,
3 shipping and receiving areas, and areas where airborne materials associated with the
4 industrial processes at the Facility may settle onto the ground. Plaintiff is informed
5 and believes, and thereupon alleges that storm water flowing over these areas collects
6 suspended sediment, dirt, metals, and other pollutants as it flows towards the storm
7 water discharge locations.

8 43. On information and belief, Plaintiff alleges that the majority of storm
9 water discharges from the Facility contain storm water that is commingled with runoff
10 from areas at the Facility where industrial processes occur.

11 44. There are no structural storm water control measures installed at the
12 Facility. Plaintiff is informed and believes, and thereupon alleges, that the
13 management practices at the Facility are currently inadequate to prevent the sources of
14 contamination described above from causing the discharge of pollutants to waters of
15 the United States. The Facility lacks sufficient structural controls such as grading,
16 berming, roofing, containment, or drainage structures to prevent rainfall and storm
17 water flows from coming into contact with exposed areas of contaminants. The
18 Facility lacks sufficient structural controls to prevent the discharge of water once
19 contaminated. The Facility lacks adequate storm water pollution treatment
20 technologies to treat storm water once contaminated.

21 45. Since at least January 24, 2013, Defendant has taken samples or arranged
22 for samples to be taken of storm water discharges at the Facility. The sample results
23 were reported in the Facility's Annual Reports submitted to the Regional Board.
24 Defendant certified each of those Annual Reports pursuant to the General Permit.

25 46. In Annual Reports and storm water sampling results submitted to the
26 Regional Board for the past four years, the Facility has consistently reported high
27 pollutant levels from its storm water sampling results.
28

1 47. The Facility has reported numerous discharges outside of the range of the
2 numeric water quality standard for pH of 6.5 – 8.5 established in the Basin Plan.
3 Defendant measured storm water discharges with a pH level below 6.5 on the
4 following dates: January 5, 2016; September 15, 2016; December 2, 2014; and
5 February 28, 2014. These measurements have thus violated numeric water quality
6 standards established in the Basin Plan and have thus violated Discharge Prohibition
7 A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge
8 Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of
9 the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3)
10 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

11 48. The levels of TSS in storm water detected by the Facility have exceeded
12 the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and
13 the State Board, respectively, and the instantaneous NAL value for TSS of 400 mg/L
14 established by the State Board. For example, on September 15, 2015, the level of TSS
15 measured by Defendant at one of its outfalls was 619 mg/L. That level of TSS is over
16 6 times the benchmark value and annual NAL for TSS. Defendant also has measured
17 levels of TSS in storm water discharged from the Facility in excess of 100 mg/L on
18 March 11, 2016; January 5, 2016; December 12, 2014; December 2, 2014; November
19 21, 2013; February 8, 2013; and January 24, 2013.

20 49. The levels of iron in storm water detected by the Facility have exceeded
21 the benchmark value and annual NAL for iron of 1 mg/L established by EPA and the
22 State Board, respectively. For example, on September 15, 2015, the level of iron
23 measured by Defendant from one of its outfalls was 26.1 mg/L. That level of iron is
24 over 26 times the benchmark value and annual NAL for iron. Defendant also has
25 measured levels of iron in storm water discharged from the Facility in excess of 1
26 mg/L on March 11, 2016; January 5, 2016; December 12, 2014; December 2, 2014;
27 February 28, 2014; November 21, 2013; February 8, 2013; and January 24, 2013.

1 50. The levels of O&G in storm water detected by the Facility have exceeded
2 the benchmark value and annual NAL for O&G of 15 mg/L established by EPA and
3 the State Board, respectively. For example, on November 21, 2013, the level of O&G
4 measured by Defendant at one of its outfalls was 28.8 mg/L. That level of O&G is
5 almost twice the benchmark value and annual NAL for O&G. Defendant also
6 measured levels of O&G in storm water discharged from the Facility in excess of 15
7 mg/L on December 12, 2014.

8 51. On information and belief, CCAEJ alleges that during the 2011-2012 wet
9 season, NewBasis failed to collect and analyze samples from any storm water
10 discharges from the Facility. CCAEJ alleges that Defendant has failed to collect and
11 analyze storm water discharges from the Facility the following dates: October 5,
12 2011; November 4, 2011; December 12, 2011; February 15, 2012; February 27, 2012;
13 April 11, 2012; and April 26, 2012.

14 52. On information and belief, CCAEJ alleges that NewBasis is presently
15 sampling storm water discharges from the wrong location, with respect to one of its
16 outfalls. The current SWPPP map for the Facility indicates that the storm water
17 discharge point marked "X-4" is located in the northeast corner of Building No. 2.
18 However, a map included with the Facility's 2013-2013 Annual Report locates outfall
19 "X-4" at the southwest corner of Building No. 1. On information and belief, CCAEJ
20 alleges that the northeast corner of Building No. 2 is not representative of the
21 Facility's storm water discharges because this location fails to account for the storm
22 water that flows past resin tanks, the grinding station, and hazardous waste storage –
23 which are all areas of industrial activity.

24 53. On information and belief, CCAEJ alleges that NewBasis failed to
25 conduct monthly visual observations of storm water discharges during numerous
26 months during the past five years. Based on precipitation data compared to the dates
27 in which the Facility did conduct monthly visual observation of storm water
28 discharges, CCAEJ alleges that NewBasis failed to conduct monthly visual

1 observations of storm water discharges at its storm water discharge locations on
2 numerous occasions. CCAEJ alleges that Defendant has failed to conduct monthly
3 visual observations of storm water discharges from the Facility on the following
4 months: October 2011, November 2011, December 2011, February 2012, April 2012,
5 October 2012, December 2012, May 2013, October 2013, April 2014, November
6 2014, and January 2015.

7 54. On April 27, 2015, and May 11, 2015, the Facility reported visual
8 observations of storm water discharges, but, on information and belief, CCAEJ alleges
9 that no discharges occurred at the Facility on those dates. Therefore, CCAEJ alleges
10 that NewBasis failed to conduct monthly visual observations at the Facility during
11 those months.

12 55. On information and belief, CCAEJ alleges that NewBasis has
13 consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV
14 of the 2015 Permit, by failing to complete proper ACSCE Reports as well as proper
15 Annual Evaluations for the Facility.

16 56. On information and belief, Plaintiff alleges that since at least January 24,
17 2013, Defendant has failed to implement BAT and BCT at the Facility for its
18 discharges of pH, iron, TSS, O&G, and other potentially un-monitored pollutants.
19 Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015
20 Permit requires that Defendant implement BAT for toxic and nonconventional
21 pollutants and BCT for conventional pollutants by no later than October 1, 1992. As
22 of the date of this Complaint, Defendant has failed to implement BAT and BCT.

23 57. On information and belief, Plaintiff alleges that since at least January 24,
24 2013, Defendant has failed to implement an adequate SWPPP for the Facility.
25 Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for
26 the Facility does not set forth site-specific best management practices for the Facility
27 that are consistent with BAT or BCT for the Facility. Plaintiff is informed and
28

1 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not
 2 comply with the requirements of Section X(H) and X(E) of the 2015 Permit. The
 3 SWPPP also fails to identify and implement advanced BMPs that are not being
 4 implemented at the Facility because they do not reflect best industry practice
 5 considering BAT/BCT. The SWPPP map fails to identify the proper storm water
 6 discharge locations. According to information available to CCAEJ, Defendant's
 7 SWPPP has not been evaluated to ensure its effectiveness and revised where
 8 necessary to further reduce pollutant discharges. Plaintiff is informed and believes,
 9 and thereupon alleges, that the SWPPP does not include each of the mandatory
 10 elements required by the General Permit.

11 58. Information available to CCAEJ indicates that as a result of these
 12 practices, storm water containing excessive pollutants is being discharged during rain
 13 events to channels that flow into the Santa Ana River.

14 59. Plaintiff is informed and believes, and thereupon alleges, that Defendant
 15 has failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs
 16 consistent with the General Permit.

17 60. Information available to Plaintiff indicates that Defendant has not
 18 fulfilled the requirements set forth in the General Permit for discharges from the
 19 Facility due to the continued discharge of contaminated storm water. Plaintiff is
 20 informed and believes, and thereupon alleges, that all of the violations alleged in this
 21 Complaint are ongoing and continuous.

22 VI. CLAIMS FOR RELIEF

23 FIRST CAUSE OF ACTION

24 Failure to Implement the Best Available and 25 Best Conventional Treatment Technologies 26 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

27 61. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
 28

1 fully set forth herein.

2 62. The General Permit's SWPPP requirements and Effluent Limitation B(3)
3 of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require
4 dischargers to reduce or prevent pollutants in their storm water discharges through
5 implementation of BAT for toxic and nonconventional pollutants and BCT for
6 conventional pollutants. Defendant has failed to implement BAT and BCT at the
7 Facility for its discharges of pH, iron, TSS, O&G, and other potentially un-monitored
8 pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent
9 Limitation V(A) of the 2015 Permit.

10 63. Each day since August 18, 2011, that Defendant has failed to develop and
11 implement BAT and BCT in violation of the General Permit is a separate and distinct
12 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13 64. Defendant has been in violation of the BAT/BCT requirements every day
14 since August 18, 2011. Defendant continues to be in violation of the BAT/BCT
15 requirements each day that they fail to develop and fully implement BAT/BCT at the
16 Facility.

17 **SECOND CAUSE OF ACTION**
18 **Discharges of Contaminated Storm Water**
19 **in Violation of Permit Conditions and the Act**
20 **(Violations of 33 U.S.C. §§ 1311, 1342)**

21 65. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
22 fully set forth herein.

23 66. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition
24 III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm
25 water discharges that cause or threaten to cause pollution, contamination, or nuisance.
26 Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation
27 VI(B) of the 2015 Permit prohibit storm water discharges to any surface or ground
28 water that adversely impact human health or the environment. Receiving Water

1 Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and
2 Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that
3 cause or contribute to an exceedance of any applicable water quality standards
4 contained in Statewide Water Quality Control Plan or the applicable Regional Board's
5 Basin Plan.

6 67. Plaintiff is informed and believes, and thereupon alleges, that since at least
7 February 28, 2014, Defendant has been discharging polluted storm water from the
8 Facility in excess of the applicable water quality standard for pH in violation of
9 Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation
10 VI(A) and Discharge Prohibition III(D) of the 2015 Permit.

11 68. During every rain event, storm water flows freely over exposed materials,
12 waste products, and other accumulated pollutants at the Facility, becoming
13 contaminated with pH, and other potentially un-monitored pollutants at levels above
14 applicable water quality standards. The storm water then flows untreated to channels
15 that flow into the Santa Ana River, entering the River at either Reach 3 or Reach 4.

16 69. Plaintiff is informed and believes, and thereupon alleges, that these
17 discharges of contaminated storm water are causing or contributing to the violation of
18 the applicable water quality standards in a Statewide Water Quality Control Plan and/or
19 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation
20 C(2) of the General Permit.

21 70. Plaintiff is informed and believes, and thereupon alleges, that these
22 discharges of contaminated storm water are adversely affecting human health and the
23 environment in violation of Receiving Water Limitation C(1) of the General Permit.

24 71. Every day since at least February 28, 2014, that Defendant has discharged
25 and continue to discharge polluted storm water from the Facility in violation of the
26 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33
27 U.S.C. § 1311(a). These violations are ongoing and continuous.
28

THIRD CAUSE OF ACTION

**Failure to Prepare, Implement, Review, and Update
an Adequate Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

72. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

73. The General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

74. Defendant has failed to develop and implement an adequate SWPPP for the Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, Defendant's failure to justify each minimum and advanced BMP not being implemented.

75. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

76. Each day since August 18, 2011, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

77. Defendant has been in violation of the SWPPP requirements every day since August 18, 2011. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

FOURTH CAUSE OF ACTION

**Failure to Develop and Implement an
Adequate Monitoring and Reporting Program
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

78. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

1 79. The General Permit requires dischargers of storm water associated with
2 industrial activity to have developed and be implementing a monitoring and reporting
3 program (including, *inter alia*, sampling and analysis of discharges) no later than
4 October 1, 1992.

5 80. Defendant has failed to develop and implement an adequate monitoring
6 and reporting program for the Facility.

7 81. Defendant's ongoing failure to develop and implement an adequate
8 monitoring and reporting program are evidenced by, *inter alia*, its failure to conduct
9 proper monthly visual observations at the Facility and sample storm water discharges
10 from the correct outfall at the Facility.

11 82. Each day since at least August 18, 2011, that Defendant has failed to
12 develop and implement an adequate monitoring and reporting program for the Facility
13 in violation of the General Permit is a separate and distinct violation of the General
14 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite
15 monitoring and analytical results are ongoing and continuous violations of the Act.

16
17 **VII. RELIEF REQUESTED**

18 Wherefore, Plaintiff respectfully requests that this Court grant the following
19 relief:

- 20 a. Declare Defendant to have violated and to be in violation of the Act as
21 alleged herein;
22 b. Enjoin Defendant from discharging polluted storm water from the
23 Facility unless authorized by the 2015 Permit;
24 c. Enjoin Defendant from further violating the substantive and procedural
25 requirements of the 2015 Permit;
26 d. Order Defendant to immediately implement storm water pollution
27 control and treatment technologies and measures that are equivalent to BAT or BCT;
28

1 e. Order Defendant to immediately implement storm water pollution
2 control and treatment technologies and measures that prevent pollutants in the Facility's
3 storm water from contributing to violations of any water quality standards;

4 f. Order Defendant to comply with the Permit's monitoring and reporting
5 requirements, including ordering supplemental monitoring to compensate for past
6 monitoring violations;

7 g. Order Defendant to prepare a SWPPP consistent with the Permit's
8 requirements and implement procedures to regularly review and update the SWPPP;

9 h. Order Defendant to provide Plaintiff with reports documenting the
10 quality and quantity of their discharges to waters of the United States and their efforts
11 to comply with the Act and the Court's orders;

12 i. Order Defendant to pay civil penalties of up to \$37,500 per day per
13 violation for each violation of the Act since August 18, 2011 pursuant to Sections
14 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 -
15 19.4;

16 j. Order Defendant to take appropriate actions to restore the quality of
17 waters impaired or adversely affected by their activities;

18 k. Award Plaintiff's costs (including reasonable investigative, attorney,
19 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
20 § 1365(d); and,
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 1. Award any such other and further relief as this Court may deem
2 appropriate.

3
4 Dated: October 17, 2016

Respectfully submitted,

5
6 By: /s/ Douglas J. Chermak
7 Douglas J. Chermak
8 LOZEAU DRURY LLP
9 Attorneys for Center for Community Action
10 and Environmental Justice
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EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 17, 2016

Karl Stockbridge, Chief Executive Officer
Ruchir Shanbhag, Vice President of Engineering/Technology
NewBasis West LLC
2626 Kansas Ave.
Riverside, CA 92507

VIA FIRST CLASS MAIL

CT Corporation System
Registered Agent for NewBasis West LLC
(Entity Number C0168406)
818 W. 7th St., Ste. 930
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Messrs. Stockbridge and Shanbhag and/or the current managers of NewBasis West LLC:

I am writing on behalf of Center for Community Action and Environmental Justice ("CCA EJ") in regard to violations of the Clean Water Act (the "Act") that CCA EJ believes are occurring at NewBasis West LLC's industrial facility located at 2626 Kansas Avenue in Riverside, California ("Facility"). CCA EJ is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCA EJ has members living in the community adjacent to the Facility and the Santa Ana River Watershed. CCA EJ and its members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed. This letter is being sent to NewBasis West LLC and Ruchir Shanbhag as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "NewBasis").

This letter addresses NewBasis's unlawful discharge of pollutants from the Facility into channels that flow into the Santa Ana River. The Facility is discharging storm water pursuant to

Notice of Violations and Intent to File Suit

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National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CCAEJ refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 8 33I002605. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CCAEJ hereby places NewBasis on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAEJ intends to file suit in federal court against NewBasis under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), NewBasis certifies that the Facility is classified under SIC code 3272. The Facility collects and discharges storm water from its 275,000 square-foot industrial site through at least four outfalls. On information and belief, CCAEJ alleges the outfalls contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. The outfall discharges to channels that flow into the Santa Ana River, entering the river at either Reach 3 or Reach 4.

The Regional Board has identified beneficial uses of the Santa Ana River and established water quality standards for it in the "Water Quality Control Plan for the Santa Ana River Basin (Region 8)," generally referred to as the Basin Plan. *See* http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml. The beneficial uses of these waters include, among others, groundwater recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, and rare, threatened or endangered species.

The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where

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water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan includes a narrative toxicity standard which states that “[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health.” *Id.* at 4-20. The Basin Plan includes a narrative oil and grease standard which states that “[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-14. The Basin Plan includes a narrative suspended and settleable solids standard which states that “Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses...” *Id.* at 4-16. The Basin Plan provides that “[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5...” *Id.* at 4-18. The Basin Plan contains a narrative floatables standard which states that “[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-10. The Basin Plan contains a narrative color standard which states that “[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses.” *Id.* at 4-10.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).¹ The following benchmarks have been established for pollutants discharged by NewBasis: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; and iron – 1.0 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; and iron – 1.0 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

¹ The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

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II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

NewBasis has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

NewBasis has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, iron, and O&G in violation of the General Permit. NewBasis's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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The following discharges of pollutants from the Facility have contained measurements of pH below the range of the applicable numerical water quality standard established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Outfall (as identified by the Facility)
1/5/2016	pH	6	6.5 – 8.5	Location 1
1/5/2016	pH	6	6.5 – 8.5	Location 2
1/5/2016	pH	6	6.5 – 8.5	Location 3
1/5/2016	pH	6	6.5 – 8.5	Location 4
9/15/2015	pH	6	6.5 – 8.5	Location 1
9/15/2015	pH	6	6.5 – 8.5	Location 2
9/15/2015	pH	6	6.5 – 8.5	Location 3
9/15/2015	pH	6	6.5 – 8.5	Location 4
12/12/2014	pH	6.46	6.5 – 8.5	Location 2
12/2/2014	pH	6.26	6.5 – 8.5	Location 4
2/28/2014	pH	6.36	6.5 – 8.5	Location 2
2/28/2014	pH	6.49	6.5 – 8.5	Location 4

The information in the above table reflects data gathered from NewBasis's self-monitoring during the 2013-2014 and 2014-2015 wet seasons, as well as the 2015-2016 reporting year. CCAEJ alleges that since at least August 16, 2011, and continuing through today, NewBasis has discharged storm water contaminated with pollutants at levels that were below the range of the applicable water quality standard for pH.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
3/11/2016	Total Suspended Solids	353 mg/L	100 mg/L	Location 1
3/11/2016	Total Suspended Solids	212 mg/L	100 mg/L	Location 2
3/11/2016	Total Suspended Solids	210 mg/L	100 mg/L	Location 3

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1/5/2016	Total Suspended Solids	215 mg/L	100 mg/L	Location 1
1/5/2016	Total Suspended Solids	377 mg/L	100 mg/L	Location 2
1/5/2016	Total Suspended Solids	342 mg/L	100 mg/L	Location 3
1/5/2016	Total Suspended Solids	206 mg/L	100 mg/L	Location 4
9/15/2015	Total Suspended Solids	619 mg/L	100 mg/L	Location 1
9/15/2015	Total Suspended Solids	593 mg/L	100 mg/L	Location 2
2015-2016 reporting year	Total Suspended Solids	275 mg/L	100 mg/L	All discharge points ²
12/12/2014	Total Suspended Solids	107 mg/L	100 mg/L	Location 1
12/2/2014	Total Suspended Solids	116 mg/L	100 mg/L	Location 1
11/21/2013	Total Suspended Solids	211 mg/L	100 mg/L	Location 1
11/21/2013	Total Suspended Solids	153 mg/L	100 mg/L	Location 3
2/8/2013	Total Suspended Solids	146 mg/L	100 mg/L	Location 1
2/8/2013	Total Suspended Solids	106 mg/L	100 mg/L	Location 2
2/8/2013	Total Suspended Solids	329 mg/L	100 mg/L	Location 4
1/24/2013	Total Suspended Solids	171 mg/L	100 mg/L	Location 1
1/24/2013	Total Suspended Solids	225 mg/L	100 mg/L	Location 2
1/24/2013	Total Suspended Solids	105 mg/L	100 mg/L	Location 3
11/21/2013	Oil & Grease	28.8 mg/L	15 mg/L	Location 4
2/8/2013	Oil & Grease	17.4 mg/L	15 mg/L	Location 4
3/11/2016	Iron	10.7 mg/L	1.0 mg/L	Location 1
3/11/2016	Iron	2.31 mg/L	1.0 mg/L	Location 2
3/11/2016	Iron	1.5 mg/L	1.0 mg/L	Location 3
1/5/2016	Iron	3.4 mg/L	1.0 mg/L	Location 1
1/5/2016	Iron	16.5 mg/L	1.0 mg/L	Location 2
1/5/2016	Iron	1.51 mg/L	1.0 mg/L	Location 3
1/5/2016	Iron	2.32 mg/L	1.0 mg/L	Location 4
9/15/2015	Iron	26.1 mg/L	1.0 mg/L	Location 1
9/15/2015	Iron	21.8 mg/L	1.0 mg/L	Location 2
9/15/2015	Iron	1.17 mg/L	1.0 mg/L	Location 4
2015-2016 reporting year	Iron	7.4 mg/L	1.0 mg/L	All discharge points ³
12/12/2014	Iron	4.09 mg/L	1.0 mg/L	Location 1
12/12/2014	Iron	1.34 mg/L	1.0 mg/L	Location 3
12/2/2014	Iron	3.14 mg/L	1.0 mg/L	Location 1

² This value represents the average of all TSS measurements taken at the Facility during the 2015-2016 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

³ This value represents the average of all iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.

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12/2/2014	Iron	2.1 mg/L	1.0 mg/L	Location 2
12/2/2014	Iron	1.3 mg/L	1.0 mg/L	Location 3
2/28/2014	Iron	1.4 mg/L	1.0 mg/L	Location 2
11/21/2013	Iron	1.97 mg/L	1.0 mg/L	Location 1
11/21/2013	Iron	1.42 mg/L	1.0 mg/L	Location 3
11/21/2013	Iron	1.18 mg/L	1.0 mg/L	Location 4
2/8/2013	Iron	2.61 mg/L	1.0 mg/L	Location 1
2/8/2013	Iron	1.87 mg/L	1.0 mg/L	Location 2
2/8/2013	Iron	1.01 mg/L	1.0 mg/L	Location 3
2/8/2013	Iron	2.62 mg/L	1.0 mg/L	Location 4
1/24/2013	Iron	3.74 mg/L	1.0 mg/L	Location 1
1/24/2013	Iron	1.56 mg/L	1.0 mg/L	Location 2
1/24/2013	Iron	1.8 mg/L	1.0 mg/L	Location 3
1/24/2013	Iron	1.94 mg/L	1.0 mg/L	Location 4

The information in the above table reflects data gathered from NewBasis's self-monitoring during the 2012-2013, 2013-2014, and 2014-2015 wet seasons and the 2015-2016 reporting year. Further, CCAEJ notes that for the 2015-2016 reporting year, the Facility has exceeded the instantaneous maximum NAL for TSS, the annual NAL for TSS, and the annual NAL for iron. CCAEJ alleges that since at least August 16, 2011, NewBasis has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, O&G, and iron.

CCAIEJ's investigation, including its review of NewBasis's Storm Water Pollution Prevention Plan ("SWPPP"), NewBasis's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that NewBasis has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, O&G, iron, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. NewBasis was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, NewBasis is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CCAIEJ alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since August 16, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAIEJ alleges that NewBasis has discharged storm water containing impermissible and unauthorized levels of pH, TSS, O&G, and iron in violation of Section 301(a) of the Act as well as Effluent Limitation

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B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.⁴

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, O&G, iron, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NewBasis is subject to penalties for violations of the General Permit and the Act since August 16, 2011.

Further, CCAEJ puts NewBasis on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which NewBasis must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including NewBasis' obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.⁵ Finally, even if NewBasis submits an Exceedance Response Action Plan(s) pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and

⁴ The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Riverside, approximately 1.4 miles from the Facility. The data was accessed via http://ipm.ucanr.edu/calludt.cgi/WXDESCRIPTION?STN=UC_RIVER.A (Last accessed on August 15, 2016).

⁵ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

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receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices (“BMPs”) are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples from all storm water discharge locations during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

In the 2011-2012 wet season, NewBasis failed to collect samples from any storm water discharges from the Facility. However, on information and belief, CSPA alleges that storm water discharges occurred at the Facility on the following dates during the 2011-2012 wet season:

- October 5, 2011
- November 4, 2011
- December 12, 2011
- February 15, 2012
- February 27, 2012
- April 11, 2012
- April 26, 2012

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In addition, on information and belief, CCAEJ alleges that NewBasis is presently sampling storm water discharges from the wrong location, with respect to one of its outfalls. The current SWPPP map for the Facility indicates that the storm water discharge point marked "X-4" is located in the northeast corner of Building No. 2. However, a map included with the Facility's 2013-2013 Annual Report locates outfall "X-4" at the southwest corner of Building No. 1. On information and belief, CCAEJ alleges that the northeast corner of Building No. 2 is not representative of the Facility's storm water discharges, because this location fails to account for the storm water that flows past resin tanks, the grinding station, and hazardous waste storage, all areas of industrial activity.

The above results in at least 29 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least August 16, 2011.

ii. Failure to Conduct Visual Observations of Storm Water Discharges

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CCAEJ alleges that NewBasis failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, CCAEJ alleges that NewBasis failed to conduct monthly visual observations of storm water discharges at its storm water discharge locations during the following months:

- 2011 – October, November, December
- 2012 – February, April, October, December
- 2013 – May, October,
- 2014 – April, November
- 2015 – January

In addition, on April 27, 2015, and May 11, 2015, the Facility reported visual observations of storm water discharges, but, on information and belief, CCAEJ alleges that no discharges occurred at the Facility on those dates. Therefore, NewBasis failed to conduct monthly visual observations at the Facility during those months.

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The above results in at least 50 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NewBasis is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since August 16, 2011.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). (Section B(14)). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CCAEJ indicates that NewBasis has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, NewBasis has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CCAIEJ puts NewBasis on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. NewBasis is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. NewBasis is subject to civil penalties for all violations of the CWA occurring since at least August 16, 2011.

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D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to

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reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, NewBasis has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. The SWPPP fails to implement and maintain minimum BMPs to minimize or prevent material tracking from the Facility.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, NewBasis has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CCA EJ puts NewBasis on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CCA EJ will include additional violations as information and data become available. NewBasis is subject to civil penalties for all violations of the CWA occurring since August 16, 2011.

III. Persons Responsible for the Violations.

CCA EJ puts NewBasis West LLC, Karl Stockbridge and Ruchir Shanbhag on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCA EJ puts NewBasis West LLC, Karl Stockbridge and Ruchir Shanbhag on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the Center for Community Action and Environmental Justice is as follows:

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Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

CCAIEJ has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
doug@lozeaudrury.com
michael@lozeaudrury.com

VI. Penalties.

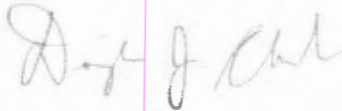
Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects NewBasis to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CCAIEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAIEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAIEJ intends to file a citizen suit under Section 505(a) of the Act against NewBasis and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAIEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAIEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice

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period. CCAEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Doug J. Chermak", is written above the typed name.

Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Center for Community Action and
Environmental Justice

SERVICE LIST – via certified mail

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

ATTACHMENT A

Rain Dates, NewBasis West LLC, Riverside, CA

10/5/2011	2/19/2013	4/25/2015
11/4/2011	3/8/2013	4/27/2015
11/6/2011	5/6/2013	5/8/2015
11/12/2011	10/9/2013	5/14/2015
11/20/2011	11/21/2013	7/18/2015
12/12/2011	12/7/2013	7/19/2015
1/21/2012	2/5/2014	9/9/2015
1/23/2012	2/23/2014	9/15/2015
2/15/2012	3/1/2014	10/4/2015
2/27/2012	4/1/2014	10/5/2015
3/17/2012	4/2/2014	11/2/2015
3/18/2012	4/25/2014	11/25/2015
4/11/2012	8/20/2014	12/13/2015
4/13/2012	11/21/2014	12/19/2015
4/25/2012	12/2/2014	12/22/2015
4/26/2012	12/3/2014	12/29/2015
8/30/2012	12/4/2014	1/5/2016
10/11/2012	12/12/2014	1/6/2016
11/8/2012	12/17/2014	1/7/2016
12/12/2012	12/30/2014	1/31/2016
12/13/2012	1/11/2015	2/17/2016
12/24/2012	1/26/2015	3/6/2016
12/29/2012	2/2/2015	3/7/2016
1/24/2013	2/3/2015	3/11/2016
1/25/2013	3/2/2015	4/8/2016
2/8/2013	4/7/2015	

EXHIBIT C

